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LEGISLATIVE COUNSEL

EMERGENCY MARINE FISHERIES PROTECTION
ACT OF 1974

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Mr. McINTYRE, from the Committee on Armed Services,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1988]

The Committee on Armed Services, to which was referred the bill (S. 1988) to extend, pending international agreement, the jurisdiction of the United States over certain ocean areas and fish in order to manage and conserve such fish, protect the domestic fishing industry, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

By its terms the purpose of S. 1988 is "to take emergency action to protect and conserve threatened stocks of fish * * *, until a general international agreement on fishery jurisdiction comes into force * * *". The bill would extend U.S. fishery management authority over a 200 nautical mile contiguous fishery zone and over anadromous stocks of U.S. origin wherever they may range on the high seas. In principle, the bill would commit the Federal Government to fishery management and conservation. U.S. fishermen would be granted preferential fishing rights within the 200 nautical mile fisheries zone and as to certain anadromous stocks. The stated policy of S. 1988 is "* * * to authorize no impediment to or interference with the legal status of the high seas, except with respect to fishing to the extent necessary to implement this Act."

BACKGROUND

S. 1988 was introduced on June 13, 1973, by Senator Warren G. Magnuson and was co-sponsored by Senators Cotton, Hollings, Jackson, Pastore and Stevens. It was referred to the Senate Commerce Committee. After careful study and lengthy hearings the Commerce Committee reported S. 1988 favorably.

The findings of the Commerce Committee are reflected in the bill. S. 1988 declares that "valuable coastal and anadromous species of fish off the shores of the United States are in danger of being seriously depleted by excessive fishing effort." Massive foreign fishing efforts are in large measure responsible for these depletions. International agreements in the past have failed to ensure fishery conservation, and there is a danger that further depletion of fishery resources will occur before any future international agreement can be implemented.

In reporting the bill favorably the Commerce Committee emphasized that S. 1988 would be an emergency measure, was not intended to impact on any ocean interests beyond fishing, and would expire upon U.S. ratification of an international treaty with respect to fisheries jurisdiction. The Commerce Committee concluded that passage of S. 1988 at this time would be in the best interests of the United States and the best interests of preserving threatened stocks of fish.

At the request of Senator J. William Fulbright, S. 1988 was referred consecutively to the Senate Foreign Relations Committee. After extended hearings and considerations, the Senate Foreign Relations Committee defeated a motion to report S. 1988 favorably by a vote of eight in favor and nine in opposition. Accordingly, on September 23, 1974, the Senate Foreign Relations Committee reported S. 1988 unfavorably, recommending that it not pass.

In its report the Senate Foreign Relations Committee declared that the passage of S. 1988 would encourage foreign nations to initiate a variety of broad jurisdictional claims, would disrupt existing relations with several distant water fishing nations who fish off U.S. coasts and would be inconsistent with United States' obligations under international law. It was the Foreign Relations Committee's belief that the United States coastal fishing problem should be more appropriately resolved through the Law of the Sea Conference.

COMMITTEE ACTION

On September 23, 1974, S. 1988, by unanimous consent, was referred to the Senate Armed Services Committee with instructions to report back not later than November 15, 1974. On October 8, 9, and 11, 1974, the Armed Services Committee held open hearings on S. 1988. At that time the following witnesses were heard: General George S. Brown, Chairman, Joint Chiefs of Staff; John Norton Moore, Chairman, National Security Council Interagency Task Force on the Law of the Sea; Senator Warren G. Magnuson; Senator Ted Stevens; Senator Edmund S. Muskie; and numerous representatives from the fishing industry and conservation groups.

On October 16, 1974, the Armed Services Committee's reporting date was extended by unanimous consent from November 15, 1974, to November 22, 1974. By a subsequent unanimous consent agreement, the date was further extended to November 27, 1974.

The Armed Services Committee met in Executive Session on November 25, 1974 and voted by an 8-6 margin to report S. 1988 favorably. Senators Jackson, Cannon, McIntyre, Byrd of Virginia, Hughes, Dominick, Scott of Virginia and Taft voted in favor of the bill; Senators Stennis, Ervin, Nunn, Thurmond, Tower and Goldwater voted against the bill.

DISCUSSION

U.S. coastal fishery problems

The committee began its deliberations of S. 1988 with the unanimous recognition of the critical depletion of U.S. coastal fishery stocks and the accelerating plight of U.S. coastal fishermen. Several stocks, including haddock, herring, mackerel, halibut, and yellow tail flounder, are dangerously close to depletion beyond the point of self-renewal. Fish are a vital source of protein which is all the more valuable precisely because it has been renewable. With world demand for food steadily increasing, it is essential that the United States properly manage and conserve its fishery resources.

While over-fishing and the consequent depletion of U.S. fishery stocks has continued at a growing rate for more than a decade, the catch of the U.S. fishing fleets has remained relatively constant. At the same time, the catch of U.S. coastal fishing fleets has dramatically declined as a percentage of the total catch off U.S. coasts.

Huge foreign fishing fleets which use "factory" fishing methods are often subsidized by foreign governments, have forced U.S. fishermen to greatly increase their efforts merely to retain a steadily diminishing share of the total fishing catch off U.S. coasts. It should be pointed out that this situation has led to an alarming increase in the number of confrontations between foreign and U.S. coastal fishermen. New fishing agreements reached under the mandate of S. 1988 will hopefully eliminate these confrontations between fishermen.

The committee recognized that the optimal solution to maintaining healthy fishery stocks and a viable coastal fishing industry would be for the Law of the Sea Conference to reach an agreement comparable in substance to S. 1988. Based on the evidence presented to the Committee, it is likely that the Law of the Sea Conference will eventually endorse the substance of S. 1988. But so far, progress at the Law of the Sea Conference has been painfully slow on the over 80 ocean issues under discussion by 148 participating nations. As must be realistically expected with any conference of such magnitude and complexity, international agreement may not occur for several years. In the meantime, the harm to U.S. coastal fishery stocks, as well as to the U.S. coastal fishing industry continues and threatens to become irreversible.

By its terms S. 1988 seeks to provide much needed emergency relief to the United States fishery problems in the anticipation of an eventual international agreement on the status of coastal fishery jurisdiction. S. 1988 is an interim measure which would quickly take effect and automatically expire at such time as the United States ratified an international treaty with respect to fishery jurisdiction. In short, S. 1988 represents a prompt and effective solution to U.S. coastal fishing problems.

National Security and other ocean considerations

In evaluating S. 1988, the Committee considered the effect passage of S. 1988 might have on other U.S. ocean interests, particularly national security interests.

The Committee noted that the United States does have significant national security interests at stake in the Law of the Sea Conference. In testimony before the Committee, Defense Department officials pointed out that two of the primary U.S. objectives of the Law of the Sea Conference were to obtain international agreement on a narrow definition of territorial seas and on the principle of unimpeded transit of straits. While appreciating the significance of these two U.S. objectives to the mobility and survivability of U.S. military forces, the Committee does not believe that these objectives would be significantly affected by the passage of S. 1988. S. 1988 applies exclusively to fishery jurisdiction. It does not extend U.S. territorial sovereignty. It does not alter the legal status of any vessel on the high seas.

Moreover, S. 1988 is wholly consistent with the present U.S. negotiating position at the Law of the Sea Conference. Establishment of a 200 nautical mile coastal fisheries zone, perhaps more than any other issue, enjoys the endorsement of a majority of nations at the Law of the Sea Conference. Because of its limited application to fishery jurisdiction only, passage of S. 1988 should not undermine progress at the Law of the Sea Conference on other ocean interests. Rather, passage of S. 1988 may simply expedite international agreement on the principle of a 200 nautical mile coastal fisheries zone.

Another contention, put forward by both Defense and State Department witnesses, was that foreign nations would retaliate against passage of S. 1988 by unilaterally imposing a variety of broader territorial or transit restrictions. The Committee felt, however, that such contentions were exaggerated and without sufficient support. Efforts by foreign nations to take retaliatory measures against the United States beyond the area of fisheries would be both unwarranted and unjustifiable.

Defense officials also stressed to the Committee the potential of armed confrontations arising out of enforcement of S. 1988. Decisive action through passage of S. 1988 should not, however, measurably increase the risk of armed confrontations. S. 1988 does not abrogate any existing U.S. treaties; on the contrary, it specifically directs the Secretary of State to amend existing treaties and negotiate new agreements with foreign nations consistent with S. 1988. Passage of S. 1988 would give the Secretary of State sufficient leverage in such negotiations to work out satisfactory fishing arrangements with foreign nations without resort to armed confrontations. Since S. 1988 has largely come to represent the bargaining position of most nations at the Law of the Sea Conference, these same nations should not be expected to offer uncompromising resistance to enforcement of S. 1988.

Finally, the Committee was not persuaded to oppose S. 1988 for reasons pertaining to international law. To be sure, the United States has in the past maintained by statute a 12 nautical mile coastal fisheries zone and has consistently refused to recognize foreign fisheries

claims beyond 12 nautical miles. Nevertheless, international law is dynamic and ambiguous. Dramatic changes have recently occurred in the levels of fishery stocks, the technology of fishing, and the extent of distant fishing efforts. Adjustments in international law must be made to accommodate these changed conditions. A growing number of nations—approximately 36 at present—have in fact extended fishery jurisdictions beyond 12 nautical miles.

As the negotiations at the Law of the Sea Conference have demonstrated, an undeniable momentum exists for international acceptance of a 200 nautical mile fishing jurisdiction. S. 1988 would allow the United States to lead that momentum rather than be swept up by it.

CONCLUSION

S. 1988 would provide an effective emergency and interim remedy to the problems of conserving U.S. coastal fishery stocks and preserving a viable U.S. coastal fishing industry. In the Committee's judgment the effect of passage of S. 1988 on other U.S. ocean interests—and specifically on U.S. national security interests—would not be sufficient to offset the bill's overall desirability. Thus, the Committee reports the bill favorably and recommends that it do pass.

MINORITY VIEWS

Because of the important impact S. 1988 can be expected to have on U.S. national interests and in light of the substantial disagreement within the Armed Services Committee regarding the desirability of S. 1988, I believe it is necessary to submit additional views in opposition to passage of S. 1988.

S. 1988 is designed to relieve the problems of the depletion of U.S. coastal fishery stocks and the growing economic pressures on the U.S. coastal fishing industry. These are serious problems which deserve the prompt and strenuous efforts of both the Congress and the Executive. Conserving fishery resources and maintaining a viable coastal fishing industry are of crucial national interest.

In considering the desirability of enacting S. 1988 into law, however, the committee must evaluate the bill in the broadest context of overall U.S. interests. Because S. 1988 can be expected to affect adversely U.S. national security interests as well as other U.S. interests, I believe its passage at this time would be unwise. It would be inconsistent with U.S. obligations under international law and does not, in my view, represent the most effective means of resolving U.S. fisheries problems.

S. 1988 WILL THREATEN U.S. NATIONAL SECURITY INTERESTS

Enforcement problems

S. 1988 would extend U.S. fishery jurisdiction by approximately two million square miles. Enforcement of S. 1988 throughout such a large area will be difficult and costly. If the fishing vessels of any major fishing nation defied U.S. fishing authority in the 200 nautical mile coastal zone, the Coast Guard alone would be unable to enforce the provisions of S. 1988. The resources of the Defense Department would have to be utilized for enforcement purposes.

Open defiance of U.S. authority would not be unlikely given the recent defiance by Great Britain of Iceland's 50 nautical mile fishery zone during the so-called "Cod War" and since U.S. action in declaring a 200 nautical mile fishery zone could be reasonably viewed by foreign nations as a violation of international law. The fining and imprisonment of foreign fishermen under S. 1988 would surely be considered by major fishing nations to be a serious provocation. Hence, the risk of armed confrontation between U.S. military forces and fishing boats or escort gunboats of such nations as the U.S.S.R. and Japan could be substantial.

Retaliatory measures

The mobility of U.S. strategic and general purpose forces as well as the survivability of U.S. strategic forces could be threatened by various unilateral actions of other nations in response to S. 1988. Administration officials expressed the fear that in response to the passage of

S. 1988 other nations would act in varying degrees to prevent naval surface passage, especially through straits, submerged submarine and other strategic operations, and overflights.

If the United States in its acknowledged leadership position succumbs to pressures for unilateral action to further its own interests, other nations can naturally be expected to take unilateral actions in their peculiar interests. The likelihood of foreign retaliation to a unilateral action by the United States was demonstrated by the proliferation of extended territorial sea claims that occurred after the United States declared a 12 mile fishing limit in 1966.

All the major ocean issues which are presently before the Law of the Sea Conference—from fishing rights to mineral rights to territorial jurisdiction—are closely interrelated. Commonsense and precedent suggest that other nations would respond to S. 1988 by various unilateral actions.

Undermining a favorable Law of the Sea Conference

Through the Law of the Sea Conference, the United States is trying to establish international agreement on the crucial national security concepts of unimpeded transits of straits and a narrow definition of territorial sea with the right to innocent passage. Neither the breadth of territorial seas nor the right to unimpeded transit through straits have ever been guaranteed in a substantial international agreement.

"Narrowly defined territorial seas, i.e. 12 miles or less, and the right to unimpeded transit of straits which includes submerged submarine deterrent. More importantly, the establishment of wide territorial seas and restricted transit through straits would result in serious constraints on fleet operations in such critical areas as the Mediterranean Sea. In the absence of international agreement, these constraints could be unevenly applied by both enemy and ally to impede U.S. naval forces responding to local or regional crises. Similarly, as demonstrated in the recent Middle East War, overflight rights which are inherent in the concept of unimpeded transit of straits can be essential in the United States' ability to effectively respond to crises throughout the world.

To strike the best overall agreement at the Law of the Sea Conference, the United States needs the flexibility and leverage that comes with having the broadest range of issues on which to negotiate. By being able to bargain with fundamental fishing and economic rights of the Law of the Sea Conference, the United States has the best opportunity to achieve an international agreement that will guarantee, comprehensively and systematically, U.S. ocean interests affecting national security.

S. 1988 would be inconsistent with international law

A unilateral declaration of a 200 nautical mile fishery zone would violate the freedom of fishing as established in the 1958 Geneva Agreement to which the United States was a signator. The International Court has recently held that Iceland's declaration of a 50 nautical mile fishery zone was not enforceable under international law. The United States has consistently refused to recognize any territorial or

fishing claims beyond the 12 mile limit. To be sure, fishing conditions have changed since 1958 and there is a growing consensus among nations for a 200 mile coastal fishery jurisdiction. But prevailing international law on freedom of fishing, however fragile, cannot be overturned by the unilateral action of a single nation. Legal justification of a 200 mile fishery zone would require a multilateral expression of nations that could be best achieved in the Law of the Sea Conference.

S. 1988 would satisfy some U.S. fishing interest at the risk of all other U.S. ocean interests

In addition to national security, the United States has a variety of other national interests which could be both threatened by retaliatory actions stemming from S. 1988 and deprived of satisfactory resolution in the Law of the Sea Conference. U.S. interests in the economic resources of the ocean bottom, the commercial shipping of all types of cargoes including oil, and the full range of fishery interests, both coastal and distant, are all at stake in the Law of the Sea Conference. Through the bargaining of a multilateral negotiation all of these interests can be most appropriately balanced and preserved. To the extent that countries act unilaterally on one of these issues, the chances of an overall agreement will become less.

There are other more efficient solutions to the U.S. fisheries problem than S. 1988

The bulk of the foreign fishing operations in U.S. coastal waters is done by a few major fishing nations. Although other nations fish off U.S. coasts, foreign over-fishing can be traced largely to such nations as Japan and the Soviet Union. As a result, the U.S. coastal fishing problems could be best resolved—prior to and without jeopardizing the Law of the Sea Conference—through bilateral agreements with these few nations.

At least two measures are presently under way to ease U.S. fishing problems aside from S. 1988. A new round of bilateral negotiations on fishing issues will begin shortly with Japan, the Soviet Union and other major fishing nations. A new and more stringent enforcement program for the protection of continental shelf living resources will go into effect December 9, 1974. Both of these measures, if pursued vigorously, could significantly improve the U.S. fishery situation.

CONCLUSION

The United States is confronted with serious coastal fishing problems. By passage of S. 1988 the United States will be resorting to coercion rather than cooperation to resolve its fishery problems. The United States will be satisfying its fishing interests at the risk of its national security interests and other ocean interests. Furthermore, S. 1988 would be inconsistent with existing international law. Finally, there are solutions to the U.S. fishing problems at this time other than passage of S. 1988. For all of these reasons I oppose enactment of S. 1988.

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JOHN C. STENNIS.